REMARKS

Claims 4-12 are pending. No amendments have been made by way of the present submission, thus, no new matter has been added.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issue under 35 U.S.C. §102(d)

The Examiner has rejected claims 4-12 under 35 U.S.C. §102(d) as being allegedly barred by Applicant's Japanese "patent" 2003-63958 (hereinafter referred to as JP '958). Applicants respectfully traverse this rejection.

Applicants submit that the Examiner's characterization of JP '958 as a "patent" is incorrect. Rather, JP '958 is a published version of Application No. 2001-253740 which is laid-open to the public. Further, there is no Japanese "patent" corresponding to either Application No. 2001-253740 or JP '958. Accordingly, the requirements of 35 U.S.C. §102(d) have not been met. In particular, 35 U.S.C. § 102(d) indicates that a person is entitled to a patent unless

> the invention was first **patented** or **caused to be patented**, or was the subject of an inventor's certificate, by the Applicant or his legal representatives or assigns in a foreign country **prior to the date** of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States. (emphasis added)

Therefore, in view of the fact that JP '958 has not "patented" or "caused to be patented"..."prior to the date of the application for patent in this country", this rejection is improper and should be withdrawn.

Provisional Obviousness-Type Double Patenting

The Examiner has provisionally rejected claims 4-12 under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 8, 11-14, 16, 22 and 23 as copending Application No. 10/311,972 (hereinafter referred to as the '972 application).

The Examiner has also provisionally rejected claims 4-12 under the judicially created doctrine of obviousness-type double patenting as being obvious of the claims of copending Application No. 10/343,931 (hereinafter referred to as the '931 application).

Applicants respectfully traverse these provisional rejections.

Concerning the '972 application, Applicants point out that the claims of this application are not directed to a disease and thus are clearly distinguished from the present claims which relate to ameliorating mood disorders.

Concerning the '931 application, Applicants point out that the '931 application relates to treatment of ADHD, which is clearly distinct from the present claims. The mood disorders of the present invention are discussed in the present specification, for instance, see pages 6-7. The symptoms of such mood disorders are quite distinct from those of ADHD, thus, there can exist no obviousness.

In view of the above, the above provisional rejections are improper and should be withdrawn.

In summary, Applicants respectfully submit that the present claims define allowable subject matter. Therefore, the Examiner is respectfully requested to withdraw all rejections and allow the presently pending claims.

If the Examiner has any questions or comments, please contact Craig A. McRobbie, Reg. No. 42,874, at the offices of Birch, Stewart, Kolasch & Birch, LLP at the number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By #42,874

Gerald M. Murphy, Jr.
Registration No.: 28,977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant